

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Prosecutors Seek New Hearing for Texas Man Sentenced to Death Based on Racial Bias

WASHINGTON, D.C. -- The U.S. Supreme Court should grant a Texas inmate another sentencing hearing because his initial death sentence was based on racially-biased testimony, a group of more than 20 former federal and state prosecutors argue in a [friend-of-the-court brief](#) filed late yesterday.

"Prosecutors must seek justice, not just convictions, and that duty sometimes requires foregoing or overturning a conviction in order to protect a defendant's constitutional rights. Among the most important of those rights is the constitutional assurance that no defendant's sentence will be determined based upon race," the prosecutors' brief asserts. The brief was organized by The Constitution Project, a nonpartisan legal watchdog and advocacy group.

The case involves Duane Buck, who was convicted in 1997 of murdering two people, including his estranged girlfriend, and sentenced to die. Buck does not contest his guilt, and has expressed remorse for his actions. The key issue now before the court relates to his death sentence.

At the sentencing hearing, his own attorney called an expert witness, Dr. Walter Quijano, who testified under questioning from the prosecutor that Buck was likely to be more dangerous in the future specifically because he was black. During her closing argument, the prosecutor stressed Quijano's testimony about Buck's future dangerousness based solely on his race, and the jury imposed the death penalty.

"The prosecutor's decision to elicit racially-biased testimony in an effort to justify the imposition of the death penalty in [Buck's] case is incompatible with the expectations placed upon prosecutors, as well as fundamental conceptions of due process and individualized justice," the brief argues.

The prosecutors' brief notes that the Texas attorney general found racially-biased testimony from Quijano in six other death penalty cases, and determined that the state would not oppose new hearings for all of the defendants, including Buck. When a new attorney general took office, however, he reneged on this promise in Buck's case. All the other similarly-situated defendants received new sentencing hearings.

"The failure to live by such promises to a capital defendant, in particular, constitutes an extraordinary departure from the ethical conduct that the public expects and deserves," the brief asserts.

Included among the former federal and state prosecutors signing the brief are Mark White, a former Texas governor and state attorney general, and Linda S. Hood Geffin, one of the original trial prosecutors in the case.

The case is [Buck v Davis \(No. 15-8049\)](#); the Supreme Court has scheduled oral arguments for October 5.

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[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.